IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 10367 OF 2004

ABDUL HAMID GULAM RASOOL MOMIN & ORS..

PETITIONERS Vs.

AASGAR A.G. MULLA .. RESPONDENT

Mr. Farooque Momin for petitioners

Mrs. Anita G. Bhaktwani for respondent

CORAM:-SMT. RANJANA DESAI, J.

DATED:-2-5-2005

P.C.

The petitioners are the original landlords. They filed a suit in the court of Civil Judge, Bhiwandi, being Regular Civil Suit No. 612 of 1990 on the grounds of non payment of arrears of rent, non user and change of user. The trial court dismissed the suit. The lower appellate court dismissed the appeal. Hence this writ petition.

2. I have heard at some length Mr. Momin the learned counsel for the

petitioners. He contended that both the courts have not considered the plaintiffs' case that the defendant has kept the suit premises locked without any reasonable cause continuously for more than six months immediately preceding the date of the suit. The impugned orders, therefore, suffer from patent illegalities and deserve to be set aside. I am unable to agree with the learned counsel.

3. The trial court has framed the issue as regards the plaintiffs' case that the suit premises were kept locked without any reasonable cause and also as regards change of user. The trial court has by a reasoned order after marshalling the evidence answered these issues against the plaintiffs. The lower appellate court has also framed the points as regards non-user of the suit premises and change of user. After proper analysis of the evidence the lower appellate court has confirmed the trial court's findings. I do not find any perversity in the reasoning of both the courts calling for interference with the impugned orders. Petitioner is wrong when he contends that these issues have not received consideration of the courts below.

4. My attention has been drawn by learned counsel for the respondent to the plaint. In the plaint the plaintiffs have stated that the suit premises were let out to the defendant for business purpose vide agreement of lease dated 4th February, 1972 but the defendant has changed the user from the

business to storage and he has been using the suit premises as a godown till the date of filing of the suit. However, in the agreement it is not stated as to for what type of business the premises were let out. If the suit premises are used as a godown for storage that would also amount to using them for business. Case of change of user and non user have not been made out at all.

5. In my opinion, therefore, there is no substance in the petition, the petition is rejected.

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